

Federal Deposit Insurance Corporation

§ 380.25

nature that is guaranteed by the Corporation;

(4) The unsecured amount of any debt owed to a Federal reserve bank including loans made through programs or facilities authorized under the Federal Reserve Act, 12 U.S.C. 221 *et seq.*; and

(5) Any unsecured amount expressly designated in writing in a form acceptable to the Corporation by the appropriate United States department, agency or instrumentality that shall specify the particular debt, obligation or amount to be included as an “amount owed to the United States” for the purpose of this rule at the time of such advance, guaranty or other transaction.

(b) Other than those amounts included in paragraph (a) of this section, unsecured amounts owed to a department, agency or instrumentality of the United States that are obligations incurred in the ordinary course of the business of the covered financial company prior to the appointment of the receiver generally will not be in the class of claims designated as “amounts owed to the United States” under section 380.21(a)(3), including, but not limited to:

(1) Unsecured amounts owed to government sponsored entities including, without limitation, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Corporation;

(2) Unsecured amounts owed to Federal Home Loan Banks; and

(3) Unsecured amounts owed as satisfaction of filing, registration or permit fees due to any government department, agency or instrumentality.

(c) The United States may, in its sole discretion, consent to subordinate the repayment of any amount owed to the United States to any other obligation of the covered financial company provided that such consent is provided in writing in a form acceptable to the Corporation by the appropriate department, agency or instrumentality and shall specify the particular debt, obligation or other amount to be subordinated including the amount thereof and shall reference this paragraph (c) or 12 U.S.C. 5390(b)(1); and provided further that unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities

of the covered financial company that count as regulatory capital on the books and records of the covered financial company.

§ 380.24 Priority of claims arising out of loss of setoff rights.

(a) Notwithstanding any right of any creditor to offset a mutual debt owed by such creditor to any covered financial company that arose before the date of appointment of the receiver against a claim by such creditor against the covered financial company, the Corporation as receiver may sell or transfer any assets of the covered financial company to a bridge financial company or to a third party free and clear of any such rights of setoff.

(b) If the Corporation as receiver sells or transfers any asset free and clear of the setoff rights of any party, such party shall have a claim against the receiver in the amount of the value of such setoff established as of the date of the sale or transfer of such assets, provided that the setoff rights meet all of the criteria established under 12 U.S.C. 3590(a)(12).

(c) Any allowed claim pursuant to 12 U.S.C. 5390(a)(12) shall be paid prior to any other general or senior liability of the covered financial company described in section 380.21(a)(7). In the event that the setoff amount is less than the amount of the allowed claim, the balance of the allowed claim shall be paid at the otherwise applicable level of priority for such category of claim under § 380.21.

(d) Nothing in this section shall modify in any way the treatment of qualified financial contracts under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

§ 380.25 Post-insolvency interest.

(a) *Date of accrual.* Post-insolvency interest shall be paid at the post-insolvency interest rate calculated on the principal amount of an allowed claim from the later of (i) the date of the appointment of the Corporation as receiver for the covered financial company; or (ii) in the case of a claim arising or becoming fixed and certain after the date of the appointment of the receiver, the date such claim arises or becomes fixed and certain.